

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comcast Cable Communications, LLC, on behalf	)	CSR 7196-E
of its subsidiaries and affiliates	)	
	)	
	)	
Petition for Determination of Effective Competition	)	
in various Mississippi Franchise Areas	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 12, 2007**

**Released: October 16, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. This Order considers a petition which Comcast Cable Communications, LLC (“Comcast”) filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that Comcast is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to the petition was filed. Finding that Comcast is subject to effective competition in the listed Communities, we grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup>

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<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>5</sup> See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>6</sup> Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>7</sup> The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during this period.<sup>8</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Communities are DBS subscribers, we conclude that the population of the Communities may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>9</sup> We further find that Comcast has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise areas. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Comcast sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SBCA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. Comcast asserts that it is the largest MVPD in the majority of the Communities because its subscribership exceeds the aggregate DBS subscribership in eight of the 11 Communities.<sup>10</sup>

5. With regard to the remaining three Communities, Comcast contends that although it cannot demonstrate that it is the largest MVPD in all of these franchise areas because the SBCA aggregates the DBS subscribership figures, it still has satisfied the second prong of the competing provider test for these Communities.<sup>11</sup> Comcast claims to be subject to competing provider competition

<sup>6</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>8</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

<sup>9</sup> *See* 47 C.F.R. § 76.905(g).

<sup>10</sup> Comcast Petition at 4-5. Comcast states that its subscribership exceeded the aggregate DBS subscribership in eight of 11 franchise areas subject to the competing provider test. These Mississippi communities include Ellisville, Hattiesburg, Heidelberg, Lamar County, Lauderdale County, Meridian, Petal, and Sandersville.

<sup>11</sup> Comcast Petition at 5. The three Communities are Forest, Jones, and Purvis, Mississippi.

in these communities because DBS penetration exceeds 15 percent of occupied households, and because the number of Comcast subscribers also exceeds 15 percent of the occupied households.<sup>12</sup> Comcast determined the competing provider penetration levels in the franchise areas by accurately segmenting the populations within each zip code to correspond to political boundaries.<sup>13</sup> For this purpose, Comcast employed Media Business Corp. (“MBC”), formerly known as SkyTrends, which uses enhanced mapping software to overlay franchise boundaries and the Census Department’s “block group level households,” which are far smaller than zip codes.<sup>14</sup> This yielded an estimated numerical DBS penetration in each of the Communities. Comcast then compared that penetration data to the 2000 Census population data for each of the Communities. This produced a percentage estimate of DBS penetration that, in each of the Communities, was above the 15 percent required by the second prong of our competing provider test.

6. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Comcast has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that its cable system serving the Communities set forth on Attachment A is subject to competing provider effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Comcast Cable Communications, LLC for a determination of effective competition in the Communities listed thereon **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the local franchising authorities overseeing Comcast Cable Communications, LLC **IS REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.*

<sup>15</sup> 47 C.F.R. § 0.283.

## Attachment A

**Cable Operator Subject to Competing Provider Effective Competition****COMCAST CABLE COMMUNICATIONS, LLC: 7196-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>DBS Subscribers<sup>+</sup></b>	<b>2000 Census Household</b>
Ellisville	MS0236	46.34%	565	1,220
Forrest	MS0132	31.05%	2,469	7,953
Hattiesburg	MS0052	17.67%	3,056	17,295
Heidelberg	MS0335	47.36%	152	320
Jones	MS0250	50.34%	7,881	15,656
Lamar County	MS0053	41.65%	4,724	11,342
Lauderdale County	MS0225 MS0293	30.89%	4,078	13,202
Meridian	MS0061	19.08%	3,046	15,966
Petal	MS0057	34.54%	1,029	2979
Purvis	MS0149	51.43%	404	786
Sandersville	MS0219	47.93%	152	317

CPR= Percent DBS penetration

+ = See Cable Operator Petitions